

House Bill 1151 (AS PASSED HOUSE AND SENATE)

By: Representatives Knight of the 126th, Tumlin of the 38th, and Mosby of the 90th

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16 and 48 of the Official Code of Georgia Annotated, relating, respectively,
2 to crimes and offenses and revenue and taxation, so as to change provisions regarding raffle
3 operations by nonprofit, tax-exempt organizations; to change certain provisions regarding
4 bingo definitions and licensing procedures; to revise and modernize certain provisions
5 regarding state income tax; to revise provisions relative to adjustment of taxable income with
6 respect to income from federal obligations and certain other obligations; to change certain
7 provisions regarding organizations exempt from state income tax; to change certain
8 requirements regarding consent agreements; to change certain substantiation requirements
9 regarding the tax credit for private driver education courses; to provide for certain electronic
10 filing requirements; to define the terms "distribution credited" and "distribution paid" with
11 respect to current income tax payments; to authorize certain elections regarding lump sum
12 distributions with respect to withholding requirements for income tax; to revise and change
13 certain provisions regarding withholding tax on distributions to nonresident members of
14 partnerships, Subchapter "S" corporations, and limited liability companies; to provide an
15 effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Titles 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
19 amended by revising subparagraph (d)(2)(E) of Code Section 16-12-22.1, relating to raffle
20 licenses, as follows:

21 ~~"(E) A determination letter from the Georgia Department of Revenue certifying~~
22 statement affirming that the applicant is exempt under the income tax laws of this state
23 under Code Section 48-7-25;"

SECTION 2.

Said title is further amended by revising paragraph (3.1) of Code Section 16-12-51, relating to definitions pertaining to bingo, as follows:

"(3.1) 'Nonprofit, tax-exempt organization' means an organization, association, corporation, or other legal entity which has been determined by the federal Internal Revenue Service to be exempt from taxation under federal tax law and ~~has been determined by the Georgia Department of Revenue to be~~ which is exempt from taxation under the income tax laws of this state under Code Section 48-7-25; which is organized or incorporated in this state or authorized to do business in this state; and which uses the proceeds from any bingo games conducted by such organization solely within this state."

SECTION 3.

Said title is further amended by revising paragraph (5) of subsection (b) of Code Section 16-12-53, relating to bingo licensing procedures, as follows:

"(5) A ~~determination letter from the Georgia Department of Revenue certifying statement~~ affirming that the applicant is exempt under the income tax laws of this state under Code Section 48-7-25;"

SECTION 4.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in Code Section 48-7-21, relating to taxation of corporations, by revising subparagraph (b)(1)(B) as follows:

"(B) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent such interest or dividends are includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. There shall also be subtracted from taxable income any income derived from the authorized activities of a domestic international banking facility operating pursuant to the provisions of Article 5A of Chapter 1 of Title 7, the 'Domestic International Banking Facility Act,' and any income arising from the conduct of a banking business with persons or entities located outside the United States, its territories, or possessions. Any amount subtracted pursuant to this subparagraph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income. ~~The direct and indirect interest expense shall be determined by multiplying the total interest expense by a fraction, the numerator of which is the taxpayer's average adjusted bases of such United~~

States obligations, and the denominator of which is the average adjusted bases for all assets of the taxpayer."

SECTION 5.

Said title is further amended by revising subsections (a) and (b) of Code Section 48-7-25, relating to organizations exempt from Georgia income tax, as follows:

"(a) The following organizations shall be exempt from taxation imposed by Code Section 48-7-21 ~~unless the exemption is denied under subsection (b) or (c) of this Code section as~~ indicated:

(1) ~~Those~~ Subject to subsections (b) and (c) of this Code section, those organizations described by which are exempt from federal income taxation pursuant to Section 501(c), 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986 shall be deemed to have similar exempt status for purposes of Code Section 48-7-21. ~~Organizations described in this paragraph shall be exempt from taxation for state purposes in the same manner and to the same extent as for federal purposes; and~~

(2) Insurance companies which pay to the state a tax upon premium income.

~~(b)(1) An organization requesting exemption under paragraph (1) of subsection (a) of this Code section shall file a written application with the commissioner. The commissioner shall issue a determination letter or ruling to an organization requesting the exemption and shall either grant or disallow the requested exempt status. Until a determination letter granting exempt status is issued by the commissioner, no exempt status shall exist. Those organizations which have an exempt status in effect under Section 501(c), 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986 on January 1, 1987, shall retain the exempt status unless revoked as provided by law. The commissioner may issue rules governing the filing of written applications and the issuance of determination letters. An organization's exempt status under paragraph (1) of subsection (a) of this Code section shall be subject to review and revocation by the commissioner in accordance with the provisions of paragraph (2) of this subsection.~~

(2)(A) The commissioner may revoke the exempt status of any organization described in paragraph (1) of subsection (a) of this Code section when:

- (i) The Internal Revenue Service revokes the exempt status of the organization;
- (ii) The organization ceases to be organized or operated in the manner in which it was organized or operated at the time the exempt status was granted;
- (iii) The organization engages in any prohibited transaction as set forth in the Internal Revenue Code of 1986; or
- (iv) There is any material change in the character or purpose of the organization or in the mode of operation of the organization.

(B) Revocation of an exempt status shall revoke the exempt status retroactively to the time of the occurrence of the disqualifying event or events. All exempt organizations shall immediately notify the commissioner in writing of the occurrence of any of the disqualifying events described in subparagraph (A) of this paragraph or of receipt by the organization of a notice of intent to terminate its exempt status by the Internal Revenue Service. The statute of limitations governing the assessment of any taxes determined to be due this state due to the revocation of exempt status shall be tolled as of the date of the occurrence of the disqualifying event or events described in subparagraph (A) of this paragraph. The commissioner at any time may require an organization which is exempt from taxation to file an information return stating the organization's gross income, receipts, disbursements, accumulation of income, and other data deemed necessary for the proper administration of this Code section."

SECTION 6.

Said title is further amended in Code Section 48-7-27, relating to computation of individual taxable net income, by revising paragraph (2) of subsection (b) as follows:

"(2) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. Any amount subtracted under this paragraph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income. ~~For all taxpayers except individuals, the direct and indirect interest expense shall be determined by multiplying the total interest expense by a fraction, the numerator of which is the taxpayer's average adjusted bases of such United States obligations, and the denominator of which is the average adjusted bases for all assets of the taxpayer.~~"

SECTION 7.

Said title is further amended in Code Section 48-7-27, relating to computation of taxable net income, by revising paragraph (2) of subsection (d) as follows:

"(2) Nonresident shareholders of a Georgia Subchapter 'S' corporation ~~must~~ shall execute a consent agreement to pay Georgia income tax on their portion of the corporate income in order for ~~the~~ such Subchapter 'S' corporation to be recognized for Georgia purposes. This A consent agreement ~~must~~ for each shareholder shall be filed by the corporation with its corporate tax return in the year in which the Subchapter 'S' corporation is first required to file a Georgia income tax return. For a Subchapter 'S' corporation in existence prior to January 1, 2008, the consent agreement shall be filed for each shareholder in the

1 first Georgia tax return filed for a year beginning on or after January 1, 2008. A consent
 2 agreement shall also be filed in any subsequent year for any additional nonresident who
 3 first becomes a shareholder of the Subchapter 'S' corporation in that year. Shareholders
 4 of a federal Subchapter 'S' corporation which is not recognized for Georgia purposes may
 5 make an adjustment to federal adjusted gross income in order to avoid double taxation
 6 on this type of income. Adjustments ~~will~~ shall not be allowed unless tax was actually
 7 paid by ~~the~~ such corporation."

8 SECTION 8.

9 Said title is further amended in Code Section 48-7-29.5, relating to the tax credit for private
 10 driver education courses, by revising subsection (d) as follows:

11 "(d) No credit shall be allowed under this Code section unless the taxpayer ~~submits with~~
 12 ~~the claim for such credit~~ has obtained written proof of the successful completion of the
 13 course of driver education by the dependent minor child and the amount expended by the
 14 taxpayer for such course."

15 SECTION 9.

16 Said title is further amended by revising Code Section 48-7-54, which is reserved, as follows:

17 "48-7-54.

18 ~~Reserved~~ The commissioner may require any nonindividual taxpayer to electronically file
 19 any return, report, or other document required to be filed by this chapter when the federal
 20 counterpart of such return, report, or other document is required to be filed electronically
 21 pursuant to the Internal Revenue Code of 1986 or Internal Revenue Service regulations.
 22 The commissioner shall be authorized to prescribe forms and promulgate rules and
 23 regulations deemed necessary in order to effectuate this Code section."

24 SECTION 10.

25 Said title is further amended in Code Section 48-7-100, relating to definitions regarding
 26 current income tax payment, by revising paragraph (2.1) and adding a new paragraph to read
 27 as follows:

28 "(2.1) 'Distribution credited' means a recognition or assignment of interest in proceeds
 29 or property of a partnership, Subchapter 'S' corporation, or limited liability company,
 30 including a net distributive share of income which is passed through to members and
 31 which may be subject to Georgia income tax.

32 (2.2) 'Distribution paid or credited' shall mean means any disbursement of funds ~~or~~
 33 ~~recognition or assignment of interest in proceeds or property of a partnership, Subchapter~~
 34 ~~'S' corporation, or limited liability company which is passed through to the members and~~

1 ~~which may be subject to Georgia income tax~~ that is made to a member with respect to
2 that member's interest in the entity and which may be subject to Georgia income tax."

3 SECTION 11.

4 Said title is further amended in Code Section 48-7-101, relating to withholding requirements
5 for income tax, by adding a new subsection to read as follows:

6 "(j)(1) The payee of any nonperiodic payment may elect to have withholding made on
7 distributions from a pension, annuity, or similar fund. Such an election shall remain in
8 effect until revoked by the payee.

9 (2) Upon such election by a payee as provided in paragraph (1) of this subsection, the
10 payor of any nonperiodic payment shall withhold from such payment the amount
11 specified by the payee, but in no event shall the amount withheld be less than the amount
12 which would be required to be withheld if such payment were a payment of wages by an
13 employer to an employee for the appropriate payroll period.

14 (3) The commissioner shall be authorized to prescribe forms and to promulgate rules and
15 regulations setting forth the requirements for withholding from such nonperiodic
16 payments and the requirements for making elections to withhold."

17 SECTION 12.

18 Said title is further amended by revising Code Section 48-7-129, relating to withholding tax
19 on distributions to nonresident members of partnerships, Subchapter "S" corporations, and
20 limited liability companies, as follows:

21 "48-7-129.

22 (a)(1) Any partnership, Subchapter 'S' corporation, or limited liability company which
23 owns property or does business within this state shall be subject to a withholding tax.
24 Such tax shall be withheld from any distributions paid or any distributions credited but
25 not paid to members who are not residents of Georgia, except as provided in subsection
26 (c) of Code Section 48-7-24.

27 (2) The amount of tax to be withheld for each nonresident member shall be determined
28 by multiplying the distribution paid or the distribution credited but not paid by a rate of
29 4 percent. To the extent that the partnership, Subchapter 'S' corporation, or limited
30 liability company remits withholding tax during the course of the tax year which exceeds
31 the Georgia income tax liability of a nonresident member, that member shall be entitled
32 to a refund of the excess withholding at the end of the taxable year.

33 (3) Any partnership, Subchapter 'S' corporation, or limited liability company which fails
34 to withhold and pay over to the commissioner any amount required to be withheld under
35 this Code section may be liable for a penalty equal to 25 percent of the amount not

1 withheld and paid over. Any penalty imposed under this subsection shall be paid upon
2 notice and demand by the commissioner or the commissioner's delegate and shall be
3 assessed and collected in the same manner as the withholding taxes imposed by this
4 article.

5 (4) The partnership, Subchapter 'S' corporation, or limited liability company and its
6 members shall be jointly and severally liable for the withholding tax liability imposed
7 under this subsection and shall be assessed accordingly.

8 (b)(1) As an alternative to the withholding requirement imposed by subsection (a) of this
9 Code section, the commissioner may allow the filing of composite returns by
10 partnerships, Subchapter 'S' corporations, or limited liability companies on behalf of their
11 nonresident members and may provide for the requirements of filing composite returns
12 by regulation. For purposes of this subsection, the term 'composite return' ~~shall mean~~
13 means a return filed by a partnership, Subchapter 'S' corporation, or limited liability
14 company on behalf of all of its nonresident members which reports and remits the
15 Georgia income tax of the nonresident members.

16 (2) Where a partnership, Subchapter 'S' corporation, or limited liability company chooses
17 to file a composite return and meets all the requirements of filing ~~the~~ such composite
18 return, such partnership, Subchapter 'S' corporation, or limited liability company shall be
19 exempt from the withholding requirements imposed under subsection (a) of this Code
20 section.

21 (3) The liability imposed by this subsection shall be paid upon notice and demand by the
22 commissioner or the commissioner's delegate and shall be assessed and collected in the
23 same manner as all other withholding taxes imposed by this article.

24 (c)(1) If a partnership, Subchapter 'S' corporation, or limited liability company fails to
25 remit withholding for a nonresident member and the commissioner determines that such
26 failure is due to a false representation that the member is a resident of Georgia, there shall
27 be imposed in addition to the tax a penalty of the greater of \$250.00 or 5 percent of the
28 amount which should have been withheld. The partnership, Subchapter 'S' corporation,
29 or limited liability company and the nonresident member shall be jointly and severally
30 liable for any such penalty imposed.

31 (2) The penalty imposed by this subsection shall be paid upon notice and demand by the
32 commissioner or the commissioner's delegate and shall be assessed and collected in the
33 same manner as withholding tax imposed by this article.

34 (d)(1) Every partnership, Subchapter 'S' corporation, or limited liability company which
35 is required to deduct and withhold the withholding tax imposed by subsection (a) of this
36 Code section shall remit such tax and file the required return on a form approved by the
37 commissioner ~~and remit payment to the department~~ as follows:

1 (A) Taxes deducted and withheld on distributions paid by a partnership, Subchapter 'S'
 2 corporation, or limited liability company to members who are nonresidents shall be due
 3 on or before the last day of the calendar month following the calendar month within
 4 which the distribution was paid or credited; and

5 (B) Taxes deducted and withheld on distributions credited but not paid by a
 6 partnership, Subchapter 'S' corporation, or limited liability company to members who
 7 are nonresidents shall be due on or before the due date for filing the income tax return
 8 for the partnership, Subchapter 'S' corporation, or limited liability company as
 9 prescribed in subsection (a) of Code Section 48-7-56 without regard to any extension
 10 of time for filing such income tax return.

11 (2) Every partnership, Subchapter 'S' corporation, or limited liability company required
 12 to deduct and withhold tax under this article shall furnish, ~~within 30 days of the close of~~
 13 ~~its taxable year, to each nonresident member for which tax is withheld a written statement~~
 14 ~~in duplicate, showing the name of the partnership, Subchapter 'S' corporation, or limited~~
 15 ~~liability company, the name of the member of the partnership, Subchapter 'S' corporation,~~
 16 ~~or limited liability company, the member's federal tax identification number, the total~~
 17 ~~amount of distributions paid to the member during the taxable year, and the total amount~~
 18 ~~of tax deducted and withheld with respect to the member during the taxable year. The~~
 19 ~~written statement shall be in a form approved by the commissioner and shall contain such~~
 20 ~~additional information as the commissioner may prescribe. The partnership, Subchapter~~
 21 ~~'S' corporation, or limited liability company shall file copies of all such written statements~~
 22 ~~with the commissioner~~ a written statement or form approved by the commissioner to each
 23 nonresident member. Such statement or form shall include the name and federal tax
 24 identification number of the partnership, Subchapter 'S' corporation, or limited liability
 25 company, the member's name and federal tax identification number, the total amount of
 26 distributions paid to the member during the taxable year, the total amount of tax deducted
 27 and withheld with respect to such member during the year, and such other information
 28 as the commissioner shall prescribe. Such statement or form shall be furnished to the
 29 nonresident member and filed in duplicate with the commissioner on or before the earlier
 30 of the date the income tax return is filed or the due date for filing the income tax return
 31 of such partnership, Subchapter 'S' corporation, or limited liability company as prescribed
 32 in subsection (a) of Code Section 48-7-56 without regard to any extension of time for
 33 filing such income tax return.

34 (3) Any partnership, Subchapter 'S' corporation, or limited liability company required to
 35 furnish a nonresident member with the written statement required by this subsection
 36 which furnishes a false or fraudulent statement or which fails to furnish the statement
 37 shall be subject to the penalty contained in subsection (d) of Code Section 48-7-126. The

1 penalty imposed by this subsection shall be paid upon notice and demand by the
2 commissioner or the commissioner's delegate and shall be assessed and collected in the
3 same manner as the withholding tax imposed by this article.

4 (e)(1) Notwithstanding subsection (a) of this Code section, a partnership, Subchapter 'S'
5 corporation, or limited liability company shall not be required to deduct and withhold tax
6 for a nonresident member if:

7 (A) A composite return is filed on behalf of nonresident members pursuant to the
8 requirements of filing such composite returns as set by the commissioner;

9 (B) The aggregate annual distributions made to a member are less than \$1,000.00;

10 (C) A federally chartered Subchapter 'S' corporation fails to meet the requirements of
11 subparagraph (b)(7)(B) of Code Section 48-7-21 and is therefore required to remit
12 corporate income tax;

13 (D) Compliance will cause undue hardship on the partnership, Subchapter 'S'
14 corporation, or limited liability company, provided that no partnership, Subchapter 'S'
15 corporation, or limited liability company shall be exempt from complying with the
16 withholding requirements imposed under subsection (a) of this Code section unless the
17 commissioner approves in writing a written petition for exemption from the
18 withholding requirements based on undue hardship. The commissioner may prescribe
19 the form and contents of such a petition and specify standards for when a partnership,
20 Subchapter 'S' corporation, or limited liability company ~~will~~ shall not be required to
21 comply with the withholding requirements due to undue hardship;

22 (E) The partnership is a publicly traded partnership as defined in Section 7704 of the
23 Internal Revenue Code of 1986; or

24 (F) The member meets one of the exceptions as set forth in the rules and regulations
25 promulgated by the commissioner.

26 (2) Where distributions paid or distributions credited but not paid, or both, to nonresident
27 members of partnerships, Subchapter 'S' corporations, or limited liability companies are
28 subject to withholding under other provisions of Georgia law or represent a return of such
29 member's investment or a return of capital, such distributions shall not be subject to
30 withholding under subsection (a) of this Code section.

31 (f) The commissioner ~~is~~ shall be authorized to prescribe forms and to promulgate rules and
32 regulations which the commissioner deems necessary in order to effectuate this Code
33 section."

SECTION 13.

1

2 This Act shall become effective upon its approval by the Governor or upon its becoming law
3 without such approval and shall be applicable to all taxable years beginning on or after
4 January 1, 2008.

SECTION 14.

5

6 All laws and parts of laws in conflict with this Act are repealed.